

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of: BAXENDALE et al	:
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Application No.: 10/527,767	:
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Filing Date: September 12, 2005	:
	:
For: CHICKEN ASTROVIRUS TYPE 2	:
-----X	:
	Group Art Unit: 1648
	Confirmation No.: 5168
	Examiner: Ali Reza Salimi
	Date: December 15, 2010

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

Mail Stop: PETITIONS
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313

Sir/Madam:

Applicants request reconsideration of the patent term adjustment indicated in the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the Issue Notification dated October 13, 2010. Applicants have determined that the patent term adjustment should be 841 days, rather than the 610 days indicated.

The Commissioner is hereby authorized to debit the fee under 37 C.F.R. 1.18(e) to Deposit Account number 19-0365.

Applicants' determination is detailed in Appendix A, the AIPA Term Calculation Report, submitted herewith. The credits and debits with respect to the patent term adjustment are summarized as follows:

USPN: 10/527,767
Attorney Docket: 2002.016 US
Request for Reconsideration of Patent Term Adjustment

Credits:

3-Year PTO Issue of Patent (Wyeth et al. v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010))	
[03/11/2005 to 11/02/2010]	966 days
4-month PTO Response to Appeal Brief	
[04/29/2009 to 09/17/2009]	19 days
4-month PTO Issue of Patent	
[04/21/2010 to 11/02/2010]	<u>73 days</u>
Total	1058 days

Debits:

3-month Applicant response to Notice of Action	
[08/08/2006 to 11/16/2006]	8 days
[12/26/2007 to 04/21/2008]	26 days
[08/06/2008 to 02/05/2009]	<u>91 days</u>
Total	125 days

Overlap Days	92 days
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Credits less Debits equal 841 days.

Applicants respectfully request that the patent term adjustment be recalculated and the full term adjustment of 841 days be applied to the issued patent.

Applicants do not believe that any other fee is due in connection with this filing. If, however, Applicants do owe any such fee(s), the Commissioner is hereby authorized to charge the fee(s) to Deposit Account No.19-0365. In addition, if there is ever any other fee deficiency or overpayment under 37 C.F.R. §1.16 or 1.17 in connection with

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this patent application, the Commissioner is hereby authorized to charge such deficiency or overpayment to Deposit Account No. 19-0365.

Respectfully submitted,

/William M. BLACKSTONE/
Registration No. 29,772

William M. Blackstone
Registration No. 29,772

Dated: **December 15, 2010**
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APPENDIX A

AIPA Term Calculation Report

APPLICATION INFORMATION			
Docket Number:	I-2002.016 US	User Name:	Blackstone, William
Application Number:	10/527,767	Firm/Company Name:	Schering-Plough
Filing Date:	09/15/2003	User Comments:	
Title/Inventor(s):	CHICKEN ASTROVIRUS TYPE 2; William Baxendale, Cambridge, GBN (GB)	Calculation Generated:	12/06/2010 05:55:58 PM ET

AIPA TERM CALCULATION SUMMARY	
Calculation Mode:	Preliminary (1)
Earliest Referenced Application under 35 USC § 120, 121, or 365(c):	09 / 18 / 2002
International Filing Date:	09 / 15 / 2003
Net Adjustment Credits:	966 Days
Net Adjustment Debits:	125 Days
Patent Term Adjustment:	841 Days
AIPA Patent Term End Date:	01 / 06 / 2025 (2)

(1) Based on your current data for this application, a complete calculation could not be performed. Some rule(s) in your application could not be analyzed because they are associated with improper events or missing related events, or an election was made not to analyze the rule. For a list of event and rule issues, see the Term Analysis tab.
(2) Assumes payment of all maintenance fees, no intervening acts, and no 35 USC 156 regulatory extensions. Terminal disclaimer(s) filed in this case, if any, may result in an earlier term end date. Without adjustment, the term would end on 09/18/2022.

09/12/2005 Application Fulfilled Requirements of 35 USC 371	14-Month PTO First Action PTO must mail a notification under 35 USC 132 or a notice of allowance under 35 USC 151 not later than 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 in an international application. Period of adjustment (credits) begins on the day after the date that is 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of 35 USC 371 and ending on the date of mailing of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(i); 37 CFR 1.702(a)(1), 1.703(a)(1).	First PTO Action: 08/08/2006 Non-final Action		0
08/08/2006 Non-final Action	3-Month Applicant Response to Notice or Action Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b). Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c). You have indicated that no 1.705(c) Showing of Due Care was made.	Applicant Response: 11/16/2006 Reply after Non-final Action under 37 CFR 1.111	8	
11/16/2006 Reply after Non-final Action under 37 CFR 1.111	4-Month PTO Response to Applicant Reply PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2),(3). 3-Month Applicant Response to Notice or Action Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b). Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c). You have indicated that no 1.705(c) Showing of Due Care was made.	PTO Response: 03/01/2007 Non-final Action		0
03/01/2007 Non-final Action		Applicant Response: 06/01/2007 Reply after Non-final Action under 37 CFR 1.111	0	

06/01/2007 Reply after Non-final Action under 37 CFR 1.111	PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2),(3).	PTO Response: 08/14/2007 Non-final Action		0
08/14/2007 Non-final Action	3-Month Applicant Response to Notice or Action Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b). Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c). You have indicated that no 1.705(c) Showing of Due Care was made.	Applicant Response: 10/04/2007 Reply after Non-final Action under 37 CFR 1.111	0	
10/04/2007 Reply after Non-final Action under 37 CFR 1.111	4-Month PTO Response to Applicant Reply PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2),(3).	PTO Response: 12/26/2007 Non-final Action		0
12/26/2007 Non-final Action	3-Month Applicant Response to Notice or Action Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b). Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c). You have indicated that no 1.705(c) Showing of Due Care was made.	Applicant Response: 04/21/2008 Reply after Non-final Action under 37 CFR 1.111	26	

<p>04/21/2008 Reply after Non-final Action under 37 CFR 1.111</p>	<p>4-Month PTO Response to Applicant Reply</p> <p>PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2),(3).</p>	<p><i>PTO Response:</i> 08/06/2008 Final Rejection</p>		<p>0</p>
<p>08/06/2008 Final Rejection</p>	<p>3-Month Applicant Response to Notice or Action</p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).</p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	<p><i>Applicant Response:</i> 02/05/2009 Notice of Appeal to Board of Patent Appeal and Interferences</p>	<p>91</p>	
<p>02/05/2009 Notice of Appeal to Board of Patent Appeal and Interferences</p>	<p>Excursion for Appellate Review</p> <p>3-Year PTO Issue Requirement does not include the period of appellate review by the BPAI or a Federal court, beginning on the date on which a notice of appeal to the BPAI was filed under 35 USC 134 and 37 CFR 41.31 and ending on the date of the last decision by the BPAI or by a Federal court in an appeal under 35 USC 141 or a civil action under 35 USC 145, or on the date of mailing of either an action under 35 USC 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the BPAI. 35 USC 154(b)(1)(B)(ii); 37 CFR 1.702(b)(4), 1.703(b)(4).</p>	<p><i>Responsive Event:</i> None Assigned</p>	<p>Not Analyzed (1)</p>	
<p>02/05/2009 Notice of Appeal to Board of Patent Appeal and Interferences</p>	<p>Credit for Successful Appellate Review</p> <p>Term of an original patent shall be adjusted (credits) for the period beginning on the date on which a notice of appeal to the BPAI was filed under 35 USC 134 and 37 CFR 41.31 and ending on the date of a final decision in favor of the applicant by the BPAI or by a Federal court in an appeal under 35 USC 141 or a civil action under 35 USC 145. 35 USC 154(b)(1)(C)(iii); 37 CFR 1.702(e), 1.703(e).</p>	<p><i>Final Appellate Decision:</i> None Assigned</p>	<p>Not Analyzed (1)</p>	

4-Month PTO Response to Appeal Brief				
(1)	04/29/2009 Appeal Brief by Applicant	PTO must respond to an appeal taken under 35 USC 134 not later than 4 months after the date on which the appeal was taken. The period of adjustment (credits) begins on the day after the date that is 4 months after the date an appeal brief in compliance with 37 CFR 41.37 was filed and ending on the date of mailing of any of an examiner's answer under 37 CFR 41.39, an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. 35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(4).	PTO Response to Appeal Brief: 09/17/2009 Examiner's Answer to Appeal Brief	19
(2)	01/21/2010 Notice of Allowance under 35 USC 151	3-Month Applicant Response to Notice or Action Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. 35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b). Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c). You have indicated that no 1.705(c) Showing of Due Care was made.	Applicant Response: 04/21/2010 Issue Fee Payment under 35 USC 151	0
(3)	04/21/2010 Issue Fee Payment under 35 USC 151	4-Month PTO Issue of Patent PTO must issue a patent not later than 4 months after the date on which the issue fee was paid under 35 USC 151 and all outstanding requirements were satisfied. The period of adjustment (credits) begins on the day after the date that is 4 months after the date the issue fee was paid and all outstanding requirements were satisfied and ends on the day the patent issues. 35 USC 154(b)(1)(A)(iv); 37 CFR 1.702(a)(4), 1.703(a)(6).	Issue Date: 11/02/2010 Issue Date	73
Total Exclusion, Debit, and Credit Days:		0	125	1058
Overlap Days (8) :		0	0	92
Net Exclusion, Debit, and Credit Days:		0	125	966
Patent Term Adjustment Days (9) :				841

- (4) Calculations of Debit, Credit, and Exclusion Days are determined by the rule assignments, assignments of related events, and analysis options in the Apply Term Rules tab. The patent professional using this system is responsible for reviewing and updating the Apply Term Rules tab to ensure all data is complete, correct, and consistent with their judgment and interpretation of applicable legal authority.
- (5) Exclusion Days are periods which are not included in determining the end of the 3-year period after the date on which the application was filed under 35 USC 111(a), or the national stage commenced under 35 USC 371(b) or (f) in an international application, used to determine credits under the 3-Year PTO Issue of Patent rule. See 35 USC 154(b)(1)(B)(i)-(iii); 37 CFR 1.702(b)(1)-(5), 1.703(b)(1)-(4).
- (6) Debit Days are days where grounds for reduction of period of adjustment of patent term exist. See, e.g., 37 CFR 1.704. Debit Days are sometimes referred to as Applicant Delay.
- (7) Credit Days are days where grounds for adjustment of patent term exist. See, e.g., 37 CFR 1.702, 1.703. Credit Days are sometimes referred to as USPTO Delay.
- (8) To the extent credit periods overlap other credit periods, debit periods overlap other debit periods, or exclusion periods overlap other exclusion periods, overlaps are subtracted so that each calendar day generates at most one credit day, one debit day, and one exclusion day.
- (9) Patent Term Adjustment Days equals Net Credit Days minus Net Debit Days, but is not less than zero.